(2)

No. 90-284

In The

Supreme Court of the United States

October Term, 1990

BOATMEN'S NATIONAL BANK OF ST. LOUIS, AS SUCCESSOR IN INTEREST TO CENTERRE BANK, N.A., f/k/a FIRST NATIONAL BANK OF ST. LOUIS,

Petitioner,

vs.

GARLAND CARVER, SUCCESSOR TRUSTEE FOR CITY OF MOUNT PLEASANT, IOWA, INDUSTRIAL DEVELOPMENT REVENUE BOND ISSUE (SAI PROJECT) and CITY OF GILMAN, IOWA, INDUSTRIAL DEVELOPMENT REVENUE BOND ISSUE (SAI PROJECT),

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

RESPONDENT'S BRIEF IN OPPOSITION

MARK E. SCHANTZ
JON P. SULLIVAN
of
DICKINSON, THROCKMORTON, PARKER, MANNHEIMER & RAIFE,
A Professional Corporation
1600 Hub Tower
699 Walnut Street
Des Moines, Iowa 50309
(515) 244-2600

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the record adequately presents the 11 U.S.C. § 1141(a) res judicata issue belatedly suggested by Petitioner?

2. Whether either of the supposed federal questions suggested by Petitioner merits the present attention of this Court?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

I. CASES:

TABLE OF AUTHORITIES – Continued

STATEMENT OF THE CASE

On November 21, 1984, Garland Carver ("Carver") as successor trustee for the holders of certain industrial revenue bonds issued for the benefit of SAI Corporation ("SAI"), brought suit against the Federal Deposit Insurance Corporation ("FDIC"), as receiver for the failed Mount Pleasant Bank and Trust Company ("the Mount Pleasant Bank"). The Mount Pleasant Bank had previously served as trustee for the bondholders Carver now represents, and was responsible for collecting payments from SAI on the bonds. The Mount Pleasant Bank, together with what is now Boatmen's National Bank of St. Louis ("Boatmen's"), had also extended loans of their own to SAI. The central allegation of Carver's petition was the state law damage claim that the Mount Pleasant Bank breached its fiduciary duty of loyalty to the bondholders in the manner in which it collected payments from SAI on the bonds. On August 19, 1986, Carver amended his petition to name Boatmen's as an additional defendant, on the ground Boatmen's participated in (aided and abetted) the Mount Pleasant Bank's breach of fiduciary duty.

Carver amended his petition again on October 12, 1987, at which time he specifically alleged that the Mount Pleasant Bank's breach of fiduciary duties included the betterment of its own position, vis-a-vis the bondholders' position, by acquiring additional collateral from SAI to better secure the banks' own loans to SAI after SAI had defaulted on the bond loans. Carver also alleged that the taking of such security interests, including a security interest in an agreement for the purchase of stock in

Southeastern Foam Company ("the stock purchase agreement"), constituted a fraudulent conveyance. Boatmen's filed an answer to that second amended petition on September 22, 1988, in which it alleged that its security interest in the stock purchase agreement was properly perfected, but in which Boatmen's made no mention whatsoever of a res judicata defense.[1] At no subsequent time has Boatmen's sought to amend its answer to include "res judicata" as an affirmative defense, nor did Boatmen's so much as mention that concept before the trial court.

The trial court entered Findings of Fact and Conclusions of Law on February 2, 1989, finding that Boatmen's had played a dominant role in a scheme by the banks to conceal SAI's financial difficulties from the bondholders long enough for the banks to improve their position by encumbering previously unencumbered assets. The trial court then ordered the banks to present it with an accounting of all proceeds of such previously unencumbered collateral so that it might fashion an equitable remedy. The trial court did not limit the accounting to proceeds received by the banks outside the SAI bankruptcy proceeding. In response to the trial court's order, Boatmen's submitted what it characterized as "the best reconstruction of funds" it could muster regarding payments it had received from the collateral in question.

---

[1] The bankruptcy court order which Boatmen's now asserts was "res judicata" of Carver's state court claims had been entered on July 6, 1986, more than two years before Boatmen's filed its answer to Carver's second amended petition.

Boatmen's told the court it could not document further the source of any funds, other than as appeared in its accounting. After considering the submissions of the parties, the trial court entered judgment for the plaintiff and fashioned a remedy intended to restore the parties to the status quo existing prior to the banks' breach of fiduciary duty.

Carver appealed to the Supreme Court of Iowa on April 26, 1989. The gravamen of his appeal was that the trial court's remedy was inadequate in a variety of respects, including centrally that it failed to apply the proper measure of damages for breach of fiduciary duty and did not properly allocate the burden of proof regarding damages. The prevailing rules are that fiduciaries should not be allowed to benefit in any respect from their wrongdoing, and that once a breach of fiduciary duty and loss to the beneficiaries is shown, the fiduciary must prove that such losses did not result from the breach.

Boatmen's and the FDIC cross-appealed, challenging the trial court's imposition of liability and the amount of damages. For the first time, Boatmen's raised in its appellate brief dated August 28, 1989, the question of whether "money received through a confirmed bankruptcy plan of reorganization is subject to collateral attack". Boatmen's devoted one and one-half pages of its fifty-page brief to that contention. The FDIC also cross-appealed, but did not join Boatmen's in its purported reliance on 11 U.S.C. Section 1141(a). Carver, in a reply brief, argued both that Boatmen's res judicata argument was substantively incorrect, and that in any event, the argument had not been properly pleaded or proven in the trial court.

On April 18, 1990, the Iowa Supreme Court filed an opinion affirming the trial court's finding of liability, but reversing and increasing the damage award. The case was remanded to the trial court for calculation of pre- and post-judgment interest on damage amounts specified by the Supreme Court. The Supreme Court's ruling did not specifically address Boatmen's res judicata argument.

On April 30, 1990, Boatmen's petitioned the Iowa Supreme Court for rehearing. FDIC did not. One ground for the rehearing request was that the Supreme Court "improperly added to the damage award $61,000.00 which [Boatmen's] allegedly received from the federal bankruptcy court confirmed plan of reorganization made in a bankruptcy case in which plaintiff was a party and of which plaintiff approved." Boatmen's contended further that "the bankruptcy court's confirmed plan was a final judgment which, under the doctrine of res judicata, barred plaintiff from relitigating not only the issue of bondholders' right to receive monies awarded to [Boatmen's], but also precluded plaintiff from maintaining his action for breach of fiduciary duty". Boatmen's petition for rehearing was denied without opinion on May 23, 1990.

WHY THE WRIT SHOULD NOT BE GRANTED

I.

BOATMEN'S FAILURE TO COMPLY WITH STATE LAW REQUIRING IT TO AFFIRMATIVELY PLEAD AND PRODUCE EVIDENCE IN SUPPORT OF ITS RES JUDICATA ARGUMENT IN THE TRIAL COURT IS AN ADEQUATE STATE LAW GROUND TO SUPPORT THE RULINGS BELOW.

Iowa law requires defendants who wish to assert a defense of res judicata to affirmatively plead that defense in their answer, and to sustain the burden of proof on that issue at trial. The Iowa Supreme Court has repeatedly held that a party who desires to set up a prior adjudication as a bar to a claim must first assert such defense in its answer. *See Swisher & Cohrt v. Yardarm, Inc.*, 236 N.W.2d 297, 299 (Iowa 1975); *Bertran v. Glen Falls Ins. Co.*, 232 N.W.2d 527, 531 (Iowa 1975); *Bickford v. American Interinsurance Exchange*, 224 N.W.2d 450, 453 (Iowa 1974). *See also* Iowa Rule of Civil Procedure 101 ("Any defense that a contract or writing sued on is void or voidable, or was delivered in escrow, or which alleges any matter in justification, excuse, release or discharge, or which admits the facts of the adverse pleading but seeks to avoid their legal effect, must be specially pleaded"). Once the defense of res judicata is properly pleaded, the burden of proof is on the defendant to make a record adequate to show that the judgment in the prior case necessarily foreclosed the subsequent litigation. *See Berkley Intern. Co. Ltd. v. Devine*, 423 N.W.2d 9, 12 (Iowa 1988); *State v. Stergion*, 248 N.W.2d 911, 914 (Iowa 1976).

Boatmen's did not affirmatively plead its res judicata defense in its answer. Carver's second amended petition

specifically alleged that the Mount Pleasant Bank breached its fiduciary duty to the bondholders Carver represents, and that Boatmen's participated in that breach, "by acquiring additional collateral from SAI to better secure the [Banks' loans to SAI]." That "additional collateral" included the same stock option for which Boatmen's was paid $61,000.00 from the SAI bankruptcy (Respondent's Appendix 5a). Carver also specifically alleged that the bank's taking of a security interest in the stock option agreement constituted a fraudulent conveyance.[2] Notwithstanding that Carver requested damages from Boatmen's for its participation in that breach of fiduciary duty, Boatmen's did not assert the allegedly preclusive effect of the then two-year-old SAI plan of reorganization in its answer to Carver's second amended petition. Boatmen's instead merely asserted, in connection with its general denial, that its security interest in the stock option was properly perfected (Respondent's Appendix 13a).

---

[2] Boatmen's states in its Petition for Writ of Certiorari that Carver "specifically sought to recover the $61,000.00 for the first time, post-trial, during a hearing on the parties' post-trial motions." (Petition for Writ of Certiorari, p. 6, n. 1). Such statement is incorrect for two reasons. First, Carver has *never* sought the return of specific collateral or its proceeds, but has instead sought money damages for the extent to which the bondholders were injured by the breach of fiduciary duty in which Boatmen's participated. Second, Carver's second amended petition – filed more than one year before trial – very clearly sought recovery for damages arising from the bank's taking a security interest in the stock option for which Boatmen's was paid $61,000.00 under the SAI plan of reorganization. Carver's petition *specifically* identified the stock option *by name* (Respondent's Appendix 8a).

Neither did Boatmen's sustain its burden of proving that the bankruptcy court's order confirming the SAI plan of reorganization necessarily foreclosed any portion of Carver's state court claims. No offer whatsoever was made by Boatmen's during the course of the trial regarding the SAI plan of reorganization or the bankruptcy court's order approving that plan. Following a trial on the merits, the state district court ordered the parties to each submit an accounting "setting forth all amounts received by the banks from [SAI] assets taken as security after September 30, 1980," in response to which Boatmen's again failed to make any record regarding the bankruptcy court order on which it now bases its res judicata argument. Boatmen's also failed to disclose to the trial court the payments it had received from the collateral in question pursuant to the SAI plan of reorganization. Carver himself submitted a copy of a proposed plan of reorganization for SAI, to alert the trial court to Boatmen's failure to account for all of the payments it had received from the collateral in question, but did not include any order of the bankruptcy court confirming such plan. In other words, at no time has Boatmen's introduced into the state court record the very bankruptcy court order on which it makes its res judicata argument.[3] Clearly, Boatmen's failed to sustain its burden of proving its res judicata defense.

---

[3] Although that Order is included in the appendix to Boatmen's Petition for a Writ of Certiorari, it was never before the Iowa Supreme Court. Consequently, Boatmen's is improperly requesting this Court to take notice of a bankruptcy court order which was at no time part of the record on which the Iowa Court based its decision. *See* Supreme Court Rule 14.1(h).

Although addressing many of Boatmen's numerous contentions, the Iowa Supreme Court's opinion contains no reference whatsoever to the res judicata argument. Whatever the reason for such silence, however, it is well established that this Court will assume the state court's decision was based on non-federal grounds, whenever such grounds are adequate, as they are here, to support the judgment. See *Exxon Corp. v. Eagerton*, 462 U.S. 176, 188, 103 S. Ct. 2296, 2300-2301 n. 3, 76 L.Ed.2d 497 (1983); *Fuller v. Oregon*, 417 U.S. 40, 50, n. 11, 94 S. Ct. 2116, 2123 n. 11, 40 L.Ed.2d 642 (1974); *Street v. New York*, 394 U.S. 576, 582, 89 S. Ct. 1354, 1360, 22 L.Ed.2d 572 (1969).

Boatmen's failure to develop a record in the state courts also requires a conclusion that the federal issue was not "adequately presented" below. See *Bankers Life and Cas. Co. v. Crenshaw*, 486 U.S. 71, 108 S. Ct. 1645, 1651, 100 L.Ed.2d 62 (1988); *Webb v. Webb*, 451 U.S. 493, 501, 101 S. Ct. 1889, 1894, 68 L.Ed.2d 392 (1981). Boatmen's res judicata theory, unsupported by any remotely analogous federal or state decisions, would not be appropriately considered here absent "the benefit of a well-developed record and a reasoned opinion on the merits." *Bankers Life, supra* at 1651. Neither is present.

II.

NEITHER OF THE SUPPOSED FEDERAL QUESTIONS SUGGESTED BY PETITIONER MERITS THE ATTENTION OF THIS COURT.

A. NEITHER STATE NOR FEDERAL COURTS HAVE HELD THAT A 11 U.S.C. § 1141(a) DEFENSE OF RES JUDICATA WOULD BE MERITORIOUS ON ANALOGOUS FACTS

As noted previously, the Iowa Supreme Court's decision in this case did not discuss the merits of Boatmen's

11 U.S.C. Section 1141(a) defense of res judicata. Iowa courts, as do courts in other jurisdictions, treat a case as precedent on an issue only when the issue is discussed and decided. Clearly, the Iowa Supreme Court's opinion in this case cannot and will not be cited as authority by any court on the res judicata issue belatedly raised by Boatmen's.

Had Boatmen's properly raised the res judicata defense, and had the Iowa Supreme Court addressed and rejected that argument, such a ruling would not constitute a departure from prior case law. Boatmen's does cite cases giving res judicata effect to bankruptcy court orders in certain circumstances. Carver does not dispute that proposition in the abstract. But Boatmen's does not and cannot point to a single decision that would recognize a res judicata defense on these facts. The cases cited by Boatmen's all involved claims *against the debtor,* or creditor claims which were *actually litigated* in the bankruptcy court. They also involve claims that grew out of the same nucleus of operative fact. Carver's claim in this action is not a claim against SAI, and the factual basis for Carver's breach of fiduciary duty claim is not the same as the factual basis for the bondholders' claim against SAI.

Boatmen's does not and could not maintain that Carver's state law, in personam, claim against other creditors was presented to and decided by the bankruptcy court. The bankruptcy court *did not decide* that the banks had acquired their security interests without breaching fiduciary duties to other creditors.

The most analogous case rejects Boatmen's res judicata defense. In *Teledyne Industries, Inc. v. Eon Corporation,*

401 F. Supp. 729, 734-36 (S.D.N.Y. 1975) aff'd, 546 F.2d 495 (2d Cir. 1976), a creditor (Teledyne) brought an action for breach of fiduciary duties against the individual directors of Eon Corporation. The corporation itself had filed for Chapter 11 reorganization and a confirmed plan had been approved. Teledyne had filed a proof of claim and otherwise participated in proceedings before the bankruptcy court. The directors' res judicata defense was rejected both because the confirmed plan only adjudicated the creditors' claims against the debtor and because the causes of action, as here, were quite different than those presented to the bankruptcy court.

Thus, even assuming that the Iowa Supreme Court decided the res judicata issue on the merits and decided it wrong, neither of which Boatmen's establishes, there is no conflict of decisions or other pending cases relating to the reach of 11 U.S.C. Section 1141(a) that requires this Court to reach out to an inadequate vehicle to address the issue.

II.

B. THE ALLOCATION OF THE BURDEN OF PROOF REGARDING DAMAGES IN THIS CASE IS A MATTER OF STATE LAW THAT RAISES NO SUBSTANTIAL FEDERAL QUESTION

Iowa law shifts the burden of proof to a fiduciary to show "fair dealing in all matters within the fiduciary obligation" whenever the fiduciary is shown to be in a position to take advantage over the principal, or appears to have closer access to the facts." *Clinton Land Co. v. M/S Associates, Inc.*, 340 N.W.2d 232, 233-35 (Iowa 1983). That

requirement, which is imposed by other jurisdictions as well, includes the burden of proving that any losses sustained by the beneficiaries of the trust were not the result of the breach of duty. *See Jefferson Nat'l Bank v. Central Nat'l Bank in Chicago*, 700 F.2d 1143, 1154 (7th Cir. 1983); *Seven G. Ranching Co. v. Stewart Title & Trust of Tucson*, 128 Ariz. 590, 592, 627 P.2d 1088, 1090 (Ariz. Ct. App. 1981); *Estate of Stetson*, 463 Pa. 64, 84, 345 A.2d 679, 682 (1975). Such rule no doubt rests at least in part on the general principle that the burden of proof should be borne by that party who has possession of facts and circumstances relating to the issue which are lacking to the other. *See Haynes v. Dairyland Mutual Ins. Co.*, 199 N.W.2d 83, 85 (Iowa 1972).

The Iowa Supreme Court ruled in this case that Boatmen's had the burden of proving that the bondholders' losses[4] were not the result of Boatmen's wrongdoing, as to items within Boatmen's specific knowledge. (Petitioner's Appendix A-12). Those facts as to which Boatmen's was found to have specific knowledge were the amounts of the payments it received from specific collateral the banks were shown to have acquired from SAI in breach of the Mount Pleasant Bank's fiduciary duties to the bondholders. (Petitioner's Appendix A-13). The Iowa Supreme Court found such allocation of proof to be fair because Boatmen's had possession of more facts in that regard than did the bondholders.

---

[4] The bondholders' total losses – i.e. the principal amount of the bonds which were not paid by SAI or the bondholder's collateral – were established at trial to be approximately $990,000.00.

The Iowa Supreme Court did not consider it necessary to remand the case to allow Boatmen's an opportunity to present further evidence on that issue; Boatmen's had already been given two such opportunities. Boatmen's first opportunity was at the trial on the merits, when Boatmen's chose not to produce as live witnesses any of its officers or agents who were involved in the SAI credit. Boatmen's second opportunity came when the trial court specifically ordered Boatmen's, post-trial, to submit an accounting as to all the proceeds it received from the collateral acquired by the banks in breach of the Mount Pleasant Bank's fiduciary duties. Boatmen's represented to the court that its accounting was "the best reconstruction of funds" it could muster, and that it could "not document further" the source of the funds it received. The Iowa Supreme Court had Boatmen's accounting before it, and had no reason to assume that Boatmen's had withheld from the trial court any information at its disposal regarding subject matter of the accounting. Indeed, Boatmen's has never explained what new evidence it could produce if further proceedings were conducted.

The Iowa Supreme Court's ruling on the allocation of the burden of proof is persuasive and well-reasoned. But even were it not the better view, an erroneous view of its own law by a state court does not create a constitutional issue.

Boatmen's extraordinary effort to convert a state law burden of proof issue to a constitutional claim is totally unsupported by authority. It can point to no case holding that the constitution is violated by the allocation of the burden of proof to a defendant on a particular issue in a

civil case. Perhaps most astonishing is Boatmen's citation of *Bell v. Duckworth*, 861 F.2d 169 (7th Cir. 1988), in support of its argument. There, Judge Posner wrote an opinion only to condemn "the facile equation of state procedural error to due process denial." 861 F.2d at 170.

The allocation of the burden of proof on one damage issue does not present a federal question at all, much less an important one. And, because it was raised only at rehearing and never expressly addressed by the state court, the decision below can never be a precedent that conflicts with another decision.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

MARK E. SCHANTZ
JON P. SULLIVAN
OF
DICKINSON, THROCKMORTON,
PARKER, MANNHEIMER & RAIFE,
A Professional Corporation
1600 Hub Tower
699 Walnut Street
Des Moines, Iowa 50309-3986
(515) 244-2600

IN THE IOWA DISTRICT COURT
FOR HENRY COUNTY

IN THE MATTER OF THE RECEIVERSHIP OF MT. PLEASANT BANK BANK AND TRUST COMPANY, MOUNT PLEASANT, IOWA.	NO. CE 805-11-84
RE: GARLAND CARVER, SUCCESSOR TRUSTEE FOR: CITY OF GILMAN, IOWA INDUSTRIAL DEVELOPMENT REVENUE BOND ISSUE (SAI PROJECT), Plaintiff, vs. FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of the Mt. Pleasant Bank and Trust Company, and CENTERRE BANK NATIONAL ASSOCIATION, f/k/a FIRST NATIONAL BANK IN ST. LOUIS, Defendants.	SECOND AMENDED PETITION FOR DAMAGES, RESTITUTION AND ACCOUNTING

I.

BREACH OF FIDUCIARY DUTIES – EXPRESS TRUST

Plaintiff states:

1. In June, 1977, SAI Corporation ("SAI") obtained a line of credit of $1,200,000.00 ("the Line of Credit") from the Mt. Pleasant Bank and Trust Company ("Bank") with participation by First National Bank in St. Louis, now known as Centerre Bank National Association ("Centerre").

2. On or about March 14, 1978, the Line of Credit was increased to $1,500,000.00, and an additional term loan in the amount of $1,000,000.00 was made available to SAI by Bank and Centerre ("the Term Loan").

3. At all times material hereto, SAI has owed substantial amounts to Bank and Centerre for borrowings under the Line of Credit and the Term Loan.

4. On or about November 1, 1977, the City of Gilman, Iowa, with the knowledge of Centerre, authorized and undertook to issue Industrial Development Revenue Bonds, SAI Corporation Project, Series 1977 (the "Series 1977 Bonds") to provide funds to pay all or a portion of the cost of acquiring, improving and equipping certain land and improvements thereon to be used by SAI as an industrial and manufacturing facility (the "Project").

5. On or about November 1, 1977, the City of Gilman, Iowa, and SAI executed a certain loan agreement (the "Agreement") whereunder the proceeds from the sale of the Series 1977 Bonds were loaned to SAI so as to enable SAI to acquire, construct, improve and equip the

Project. A copy of said loan agreement is attached to the Petition originally filed herein, marked Exhibit "A" and made a part hereof by this reference.

6. On or about November 19, 1977, the City of Gilman, Iowa, and Bank, with the knowledge of Centerre, executed a certain indenture of trust (the "Indenture") transferring to Bank all the City of Gilman's right, title and interest under the Agreement, in trust, for the benefit, security and protection of all then and future holders and owners of the Series 1977 Bonds (the "Bondholders"). A copy of the Indenture is attached to the Petition originally filed herein, marked Exhibit "B," and made a part hereof by this reference.

7. The Indenture established a trust fund in the custody of Bank designated as "City of Gilman, Iowa, Industrial Development Revenue Bond Fund, SAI Corporation Project" (the "Bond Fund") to be used to pay the principal of and premium, if any, and interest on the Bonds.

8. Bank, as Trustee, owed a fiduciary duty to all Bondholders to:

> (a) pay all moneys received by Bank under and pursuant to any of the provisions of the Agreement or the Indenture into the Bond Fund;
>
> (b) provide written notice by registered mail to each known bondholder in the event of a default as defined under Section 9.01(a), (c) or (e) of the Indenture;
>
> (c) administer the Bond Fund solely in the interest of the Bondholders;

(d) communicate to the Bondholders all material facts in connection with any dealing by Bank with the Bondholders on its own account;

(e) keep the Bond Fund separate from Bank's individual property;

(f) disclose conflict of interest transactions;

(g) realize on claims which Bank held in trust; and

(h) take reasonable steps to administer, control, protect and preserve the trust assets.

9. Plaintiff is the duly appointed, qualified, and acting Successor Trustee to Bank under the terms of the Indenture, empowered to protect and preserve trust assets for the benefit of the Bondholders.

10. Commencing on or about the 30th day of March, 1979, and at all times material hereto after such date, Bank and Centerre had knowledge that SAI was in unsound financial condition.

11. Commencing on or about the 30th day of March, 1979, the Agreement was in a continuous state of default in one or more of the following respects:

(a) Default in the payment of interest on bonds;

(b) Default in the payment of principal on bonds;

(c) Default in the repayment of amounts owed to other creditors;

(d) Default in the payment of property taxes owed on the real estate which secures the Agreement;

(e) Default in providing Bank with certified financial statements as required by the Indenture and Agreement;

(f) Default in the performance or observance of other covenants, agreements and conditions contained in the Indenture and Agreement.

12. On or about July 30, 1980, Centerre notified SAI, on its own behalf and that of Bank, that they would not extend the Line of Credit when it came due September 30, 1980, and that at such time they would also accelerate the balance owed on the Term Loan.

12(a). Commencing no later than the 30th day of September, 1980, the Line of Credit and the Term Loan were in a continuous state of default.

13. Notwithstanding Bank's knowledge of SAI's unsound financial condition and the occurrence of such events of default on the Agreement, the Indenture, the Line of Credit, and the Term Loan, Bank failed to notify the Bondholders of SAI's unsound financial condition, failed to give written notice of each such default on the Agreement to SAI and to each known Bondholder, continued to collect payments from SAI on the Line of Credit, bettered its own position vis-a-vis the Bondholders' position by acquiring additional collateral from SAI to better secure the Line of Credit and the Term Loan, and failed to disclose to the Bondholders its conflict of interest in collecting payments on the Line of Credit and acquiring additional collateral to secure the Line of Credit and the Term Loan while SAI's financial condition was unsound.

14. Bank's said failure to notify the Bondholders of SAI's unsound financial condition, its failure to give written notice of each such default on the Agreement to SAI and to each known bondholder, its continued collection of payments from SAI on the Line of Credit and betterment of its own position vis-a-vis the Bondholders' position by acquiring additional collateral to better secure the Line of Credit and the Term Loan, and its failure to disclose to Bondholders its conflict of interest in collecting payments on the Line of Credit and acquiring additional collateral to secure the Line of Credit and the Term Loan while SAI's financial condition was unsound each constitute a breach of its fiduciary duty to all Bondholders.

15. Centerre had knowledge of, participated in, and aided and abetted Bank in its breach of its fiduciary duty to all Bondholders.

16. The trust assets have suffered damage as a result of Bank's breach of its fiduciary duties.

17. Bank and Centerre profited from the breach of Bank's fiduciary duties.

18. Defendant FDIC is the duly appointed, qualified, and acting Receiver of the Mt. Pleasant Bank and Trust Company.

WHEREFORE, plaintiff prays for judgment, jointly and severally, against FDIC as receiver for Mt. Pleasant Bank and Trust Company and against Centerre Bank National Association for the amount of damage the trust is shown to have suffered as a result of the Mt. Pleasant Bank and Trust Company's breach of its fiduciary duties

to the Bondholders, or in the alternative, for the amount the Mt. Pleasant Bank and Trust Company and Centerre Bank profited from the breach of the Mt. Pleasant Bank's fiduciary duties, plus interest and the costs of this action.

II.

ACCOUNTING

For his second cause of action, plaintiff states:

19. He incorporates by reference the allegations contained in paragraphs 1 through 16 of Division I.

20. Plaintiff, as successor Trustee under the Indenture and the Constructive Trust, is entitled to an accounting by defendant FDIC as Receiver for the Mt. Pleasant Bank and Trust Company, Trustee.

WHEREFORE, plaintiff prays the court to order defendant, as Receiver for Trustee, to account for the actions of Mt. Pleasant Bank and Trust Company taken as Trustee during its tenure as Trustee.

III.

FRAUDULENT CONVEYANCE

For his third cause of action, plaintiff states:

21. He incorporates by reference the allegations contained in paragraphs 1 through 13 of Division I.

22. While the Agreement, Indenture, Line of Credit, and Term Loan were in a continuous state of default, while SAI was of unsound financial condition, and while Bank and Centerre had knowledge of such defaults and

of SAI's unsound financial condition, SAI executed and delivered to Bank and Centerre security interests in various of its assets that were theretofore unencumbered, including, without limitation, all of SAI's general intangibles, and its interest in a certain stock purchase agreement for the acquisition of the stock of one Southeastern Foam Products.

23. Prior to and at the giving of the security interests, SAI did not have property sufficient to pay its then existing debts.

24. Such security interests were given by SAI for the purpose of hindering, delaying, and defrauding its other creditors.

WHEREFORE, plaintiff prays for judgment, jointly and severally, against FDIC as receiver for Mt. Pleasant Bank and Trust Company and against Centerre Bank National Association for the amount of damage the trust is shown to have suffered as a result of the above-described fraudulent conveyances, or in the alternative, for the amount the Mt. Pleasant Bank and Trust Company and Centerre Bank profited from the above-described fraudulent conveyances, plus interest and the costs of this action.

/s/ Mark E. Schantz
MARK E. SCHANTZ

/s/ JON P. SULLIVAN
JON P. SULLIVAN
OF
DICKINSON,
THROCKMORTON,
PARKER, MANNHEIMER &
RAIFE

1600 Hub Tower
Des Moines, Iowa 50309
(515) 244-2600

ATTORNEYS FOR
PLAINTIFF.

CERTIFICATE OF SERVICE

The undersigned, hereby certifies that a copy of the document attached to this Certificate was mailed to the persons listed below at the addresses indicated, stamped with the appropriate postage for ordinary mail and deposited on the 24th day of September, 1987, in a United States Post office mail receptacle, in Des Moines, Iowa.

Mr. John Gosma
617-A Davenport Bank Building
Davenport, IA 52801

Mr. Frank Burnette
1900 Hub Tower
Des Moines, IA 50309

/s/ Rose Wilbanks

IN THE IOWA DISTRICT COURT
FOR HENRY COUNTY

IN THE MATTER OF THE RECEIVERSHIP OF MT. PLEASANT BANK AND TRUST COMPANY, MOUNT PLEASANT, IOWA	NO. CE 805-11-84
RE: GARLAND CARVER, SUCCESSOR TRUSTEE FOR: CITY OF GILMAN, IOWA, INDUSTRIAL DEVELOPMENT REVENUE BOND ISSUE (SAI PROJECT) Plaintiff, vs. FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver of the Mt. Pleasant Bank and Trust Company, and CENTERRE BANK, NATIONAL ASSOCIATION, f/k/a FIRST NATIONAL BANK IN ST. LOUIS, Defendants.	ANSWER OF DEFENDANT CENTERRE BANK NATIONAL ASSOCIATION TO PLAINTIFF'S SECOND AMENDED PETITION FOR DAMAGES, RESTITUTION AND ACCOUNTING

COMES NOW Centerre Bank, National Association, ("Centerre") and for its Answer to Plaintiff's Second Amended Petition for Damages, Restitution and Accounting, states the following:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted regarding allegations with respect to Centerre, and denied for lack of information sufficient to form a belief regarding allegations contained therein with respect to the Mt. Pleasant Bank & Trust Company ("Bank").

4. Centerre admits knowledge that on or about September 1, 1977 the Industrial Revenue Bond issue alleged was scheduled for closing, but denies any and all other allegations of paragraph 4 for lack of information sufficient to form a belief.

5. Centerre admits knowledge that the loan agreement as alleged was to have been executed on or about the time alleged, but denies all other allegations of paragraph 5 for lack of information sufficient to form a belief.

6. Centerre admits knowledge that the indenture of trust was to have been executed on or about the date alleged, but denies each and all other allegations of paragraph 6 for lack of information sufficient to form a belief.

7. Paragraph 7 of is denied for lack of information sufficient to form a belief.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted.

10. Centerre denies paragraph 10 on grounds of both lack of information sufficient to form a belief and because the term "unsound financial condition" is vague and ambiguous and Centerre does not know what "unsound financial condition" means in the context plead.

11. Paragraph 11 is denied for lack of information sufficient to form a belief.

12. Centerre admits that on July 30, 1980 it notified SAI on its own behalf that the Line of Credit would not be renewed after September 30, 1980, denies that such notification was given on behalf of the Bank, and further denies that it notified SAI it would accelerate the balance owed on the Term Loan as of September 30, 1980.

12(a) Paragraph 12a is denied.

13. Paragraph 13 is denied for lack of information sufficient to form a belief.

14. Paragraph 14 is denied for lack of information sufficient to form a belief.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

18. Paragraph 18 is admitted.

19. Centerre incorporates by reference its prior responses to paragraphs 1 through 16 of Division I of the Second Amended Petition and realleges the same as if set forth in full herein.

20. Paragraph 20 is denied.

21. Centerre incorporates by reference its prior responses to paragraphs 1 through 13 of Division I of the Second Amended Petition and hereby alleges the same as if set forth fully herein.

22. Paragraph 22 is denied. Centerre further states that its security interest in accounts receivable and contract rights, including rights to proceeds of the stock purchase agreement for acquisition of the stock of Southeastern Foam Products, was properly perfected by grant of security interest on March 14, 1978 and filing with the Secretary of State of the State of Iowa.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied for lack of information sufficient to form a belief.

WHEREFORE, Centerre requests that this Court dismiss Plaintiff's Second Amended Petition with costs to Plaintiff.

/s/ W. Don. Brittin, Jr.
W. Don Brittin, Jr.

/s/ F. L. Burnette, II
F. L. Burnette, II
– of –
NYEMASTER, GOODE,
MCLAUGHLIN, EMERY
AND O'BRIEN, P.C.
1900 Hub Tower
699 Walnut Street
Des Moines, Iowa 50309
(515) 283-3123
ATTORNEYS FOR
CENTERRE BANK
NATIONAL ASSOCIATION

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon one of the

attorneys of record for each party to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his/her last known address as shown below, with postage fully paid, and by depositing said envelope in a United States Post Office depository on the 21st day of September, 1988.

/s/ Andrea E. Jones

Jon P. Sullivan
Dickinson, Throckmorton,
Parker, Mannheimer & Raife
1600 Hub Tower
Des Moines, Iowa 50309

John S. Gosma
Rehling, Lindburg and Gosma
617A Davenport Bank Building
Davenport, Iowa 52801